

LEGISLATURE OF NEBRASKA  
NINETY-NINTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 730**

Introduced by Bourne, 8; Synowiecki, 7

Read first time January 19, 2005

Committee: Rereferred to Judiciary

A BILL

1 FOR AN ACT relating to the Nebraska Clean Indoor Air Act; to amend  
2 sections 71-5701, 71-5703, 71-5704, and 71-5709 to  
3 71-5712, Reissue Revised Statutes of Nebraska; to provide  
4 for retail tobacco businesses; to define a term; to  
5 provide for applicability; to change a penalty provision;  
6 to harmonize provisions; to repeal the original sections;  
7 and to declare an emergency.

8 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 71-5701, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           71-5701. Sections 71-5701 to 71-5713 and sections 4 and  
4 8 of this act shall be known and may be cited as the Nebraska Clean  
5 Indoor Air Act.

6           Sec. 2. Section 71-5703, Reissue Revised Statutes of  
7 Nebraska, is amended to read:

8           71-5703. For purposes of ~~sections 71-5701 to 71-5713~~ the  
9 Nebraska Clean Indoor Air Act, unless the context otherwise  
10 requires, the definitions found in sections 71-5704 to 71-5706 and  
11 section 4 of this act shall be used.

12           Sec. 3. Section 71-5704, Reissue Revised Statutes of  
13 Nebraska, is amended to read:

14           71-5704. Public place ~~shall mean~~ means any enclosed,  
15 indoor area used by the general public or serving as a place of  
16 work, including, but not limited to, restaurants, retail stores  
17 including, but not limited to, retail tobacco businesses, offices  
18 and other commercial establishments, public conveyances,  
19 educational facilities, hospitals, nursing homes, auditoriums,  
20 arenas, and meeting rooms, but excluding private, enclosed offices  
21 occupied exclusively by smokers even though such offices may be  
22 visited by nonsmokers.

23           Sec. 4. Retail tobacco business means a sole  
24 proprietorship, a partnership, a limited liability company, a  
25 corporation, or another entity (1) in which the primary activity is  
26 the retail sale of tobacco, tobacco products, and accessories and  
27 (2) as to which the sale of other products or services is merely  
28 incidental.

1                   Sec. 5.     Section 71-5708, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3                   71-5708.   Smoking areas may be designated by proprietors  
4 or other persons in charge of public places, except in places in  
5 which smoking is prohibited by the State Fire Marshal or by other  
6 law, ordinance, or regulation.

7                   Where smoking areas are designated, existing physical  
8 barriers and ventilation systems shall be used to minimize the  
9 toxic effect of smoke in adjacent nonsmoking areas. If a public  
10 place consists of a single room, one side of the room shall be  
11 reserved and posted as a no smoking area. No public place other  
12 than a bar or restaurant having a serving area of less than twelve  
13 hundred square feet or a retail tobacco business having a retail  
14 area of less than twelve hundred square feet shall be designated as  
15 a smoking area in its entirety. If a bar or restaurant having a  
16 serving area of less than twelve hundred square feet or a retail  
17 tobacco business having a retail area of less than twelve hundred  
18 square feet is designated as a smoking area in its entirety, such  
19 designation shall be posted conspicuously on all entrances normally  
20 used by the public.

21                  Sec. 6.     Section 71-5710, Reissue Revised Statutes of  
22 Nebraska, is amended to read:

23                  71-5710.   The Department of Health and Human Services  
24 Regulation and Licensure ~~shall, not later than January 1, 1980, may~~  
25 adopt and promulgate rules and regulations necessary and reasonable  
26 to implement the ~~provisions of sections 71-5701 to 71-5713~~ Nebraska  
27 Clean Indoor Air Act. The Department of Health and Human Services  
28 Regulation and Licensure shall consult with interested persons and

1 professional organizations before promulgating such rules and  
2 regulations.

3 Sec. 7. Section 71-5711, Reissue Revised Statutes of  
4 Nebraska, is amended to read:

5 71-5711. The Department of Health and Human Services  
6 Regulation and Licensure may, upon request, waive the provisions of  
7 ~~sections 71-5701 to 71-5713~~ the Nebraska Clean Indoor Air Act if it  
8 determines there are compelling reasons to do so and a waiver will  
9 not significantly affect the health and comfort of nonsmokers.

10 Sec. 8. The Nebraska Clean Indoor Air Act supersedes any  
11 ordinance, resolution, regulation, or requirement of a local  
12 governing body, in effect before, on, or after the effective date  
13 of this act, which is inconsistent with the Nebraska Clean Indoor  
14 Air Act.

15 Sec. 9. Section 71-5712, Reissue Revised Statutes of  
16 Nebraska, is amended to read:

17 71-5712. Any person who violates ~~section 71-5707~~ the  
18 Nebraska Clean Indoor Air Act shall be guilty of a Class V  
19 misdemeanor.

20 Sec. 10. Original sections 71-5701, 71-5703, 71-5704,  
21 and 71-5709 to 71-5712, Reissue Revised Statutes of Nebraska, are  
22 repealed.

23 Sec. 11. Since an emergency exists, this act takes  
24 effect when passed and approved according to law.